Wei See and Ching See vs. Found Sheong. Afong, (Executors of the Will of Achu, decemed) and others .- In Equity.

DECISION OF THE COURT DELIVERED BY ALLEY, C. J. The complainants allege in their bill that they are natives of, and residents in China, and that one of them, Wei See, was the mother of Achn, who was domiciled in Honolulu, but died in China in 1865, and that the other, Ching See, was the lawful wife of said Achu; that the that he was disinterested and obeyed said Achu had no issue, and that complainants are the heirs at law of said matter, and finally denies all combination.

It is alleged further that on the 12th day of January, 1865, he made a specific will of a portion of his estate, at Honolulu, leaving the balance undisposed of, by which be devised to Kamaka, a native woman; \$500 and his dwelling-house premises, real estate at Waikiki, and all she was not advised that Achu left with his furniture, to be held by her during her the intention of remaining in China, and natural life, and after her death to go to her so-called adopted daughter Kalauka- health when he departed. Kamaka adpa. Young Sheong and Afong were appointed Executors.

The complainants allege that at the time of making said will, Achu was possessed of personal property to the value of about \$13,000, and that he gave a letter of instructions to Young Sheong and Afong in relation to the disposition of his property; that the Executors should have held the residue of complain- \$1,000 in addition to the \$500 under the ants' property in trust for complainants, the heirs at law; and there is an allegation of fraud against the Exeutors.

It is further alleged that the will was admitted to probate Nov. 10, 1865, by Young Sheong, and that Young Sheong filed a false inventory on the 26th June, 1869, which amounts to \$6,621.65 only, and that on the 25th of May, 1869, Young Sheong filed his petition for a settlement of his accounts and the discharge of the Executors; that the final hearing was had on the 29th of June, 1869, and that their account exhibited a balance of assets of \$7,321.65, which was \$4,778.35 less than should have been exhibited, and that on that day the accounts were passed and the Executors discharged; that about \$1,500 of the claims were illegal, and 858.02, which sums were paid; that the child, complainants were heirs at law of the mother. and the respondents be compelled to pay to according to the laws of China.

was in San Francisco during most of the the elder woman, Wei See, was reported time, and that all the transactions relative among the neighbors and family to be to the estate transpired during his absence Achu's mother, and that they all called in China, and that he never took upon Ching See his (Achu's) wife; and that he himself the executorship of the will, nor visited them as a friend of Achu, having received any of the moneys.

parties that Achu's domicile was in Hon- further. olula, and it is an admitted principle that furisdiction to decree an account and distate, on the application of legatees or next of kin.-1 Mason, Harvey vs. Richards, 389; 3 John, C. R., 209.

It is a well settled principle in respect to these proceedings in Chancery for the distribution of a common fund, that parties in interest may claim a distribution, and an absent party who had no notice of the proceedings and not guilty of willful Co., and then \$2,000 to be given to my ed child here. laches or inexcusable neglect, will not be mother. I now myself bring \$2,000 home The Court declare the distribution as concluded by the decree of distribution to be given to my wife and adopted son, made by the Probate Court as void, and from the assertion of his rights by bill Mon Tuc. And for my native wife, Ka revoke the same, as the inventory was against the executors or administrators, maka, her share is \$500. The balance to fraudulent, and notice of material facts in or in case they have distributed the funds | begiven to my older brother, Hing Chong. regard to the kindred in China, which in pursuance of an order of the Court, The interest of my opium business, if it affected their rights as well as the right of against the distributees. There was no stands, to be given yearly to Cheon Tai's the person he married here, was withheld. laches on the part of the complainants, mother, my sister. I, Hee Chin, give this for they were doubtless misled as to their as a favor. If the opium shop retires contest the validity of the will, but acrights by the conduct of Young Sheong's from business, the capital amount to be quiesce in its probate, and the only claim mode of administering on the estate. His given to Poou-Kai-Chee, the house of my made by them is to recover the residue of course was wholly illegal. His inventory first generation, for expenses. I this day the personal property which belonged was incorrect, and his concealment of kin- hand this certificate to Young Sheong to the estate of the said Achu, which dred abroad from the knowledge of the Court was wanting in good faith. His Howard, 479; Story's E. R., § 106; Wis- dated after the execution of the will."

wall vs. Sampson, 14 How., 52, 67. Young Sheong in detail; it is sufficient to out its instructions in paying money to say that he joins issue with the complain- the complainants, and they acknowledged ants and calls for proof, but adds by way by their own letters that they believed has rendered no account to the Court. of averment that he sent a draft for Wei See the mother, and Ching See the \$2 500 in favor of Wei See, the mother of wife, of Achu.

tion of any concealment from the Court, or relationship of persons in China to Achu, It is the judgment of the Court that DEFORE ALLES, C. J., HARTWELL AND WIDEMANN, Z. J. any collusion, but says that the distribution and then asking for the distribution. He Yeong Sheong pay the costs of this suit. was made by the Court in proof that Ka- grossly failed in his duty in both respects, HARTWELL, J. : maks was the lawful wife of Achu, and and the course he took was calculated to ought not to have been allowed, and Court, and order a new distribution. that whether the distribution was made without notice or not, says he looked to the Court to make the proper orders; avers the orders of the Court in the whole

> The answer of Kamaka neither admits nor denies the relationship of complainants to Achu, but admits that she heard from Achu, at the time of his departure for China in the year 1865, that he had a mother in China, and has been informed and believes that she survived him; that does not believe it, but was in precarious mits the probate of the will, and makes profert of it; that she received the \$500 under said will; avers that she was the lawfully married wife of Achu, married to him under the laws of this Kingdom in 1850; that Kalaukapu was the lawfully adopted daughter of the said Achu and defendant, and makes profert of the agreement of adoption; that she received will, being her proportion by reason of her said marriage as heir at law; and further that she remitted to China, for the mother of Achu, the sum of \$500 out of the said \$1,000, out of regard for her husband and as a token of respect for his mother, not knowing that she had received about \$3,000 previously out of said estate, and avers that the respondent and Kalaukapu were entitled to the distribution; answers that she was ignorant of the legality of the proceedings of the Probate Court, but believes them correct, and denies collusion for self and ward;

make their proofs. The amended answer of said Kamaka states that the real estate mentioned in should not have been paid from the assets | said will of said Achu, is her own propof the estate; that Kamaka and Edwin erty in her own right, and not her hus-H. Boyd were appointed guardians of band's; that at the time of the adoption of riage describes the ceremonies, and it is said Kalaukapu on the 2d day of July, Kalaukapu it was the intention of the said 1859; that on the same day distribution Achu and herself to adopt her as the heir or similar, and that the Chinese have only was made of the remainder of the estate of both, and that Mr. Justice Robertson between Kamaka and Kalankapu, as fol- informed them that the articles of adoplows: to Kamaka, one-third, or \$1,924.91, tion were sufficient, and that said Kalauand to Kalaukapu, two-thirds, or \$3, kapu was always treated as their own

pleads ignorance of the other allegations

residue of the estate by law descended to The letters of Young Sheong and Afong the heirs at law, and that the said Execu- show very clearly that they regarded tors held said property in trust for them, Wei See as the mother of Achu. This is and that they are entitled to the same : further shown by the acts of Young that the complainants were residents Sheong in remitting money to Mon Tuc, in China, and had no notice of said dis- in China, for her benefit, to the amount tribution; that said Executors acted of \$2,000, and subsequently in remitting fraudulently, and well knew that the \$1,000 for the benefit of his wife and

concealed these facts from the Court and evidence in addition, but the Court is carried out his intention as expressed in permitted an unlawful distribution to be satisfied that Wei See was the mother of his will and in his letter of instructions to made, and pray that the same be set aside Achu, and that Ching See was his wife,

the complainants the residue of the es- The agreed testimony of Afong (in the during his recent residence in China, he Afong, in his answer, states that he visited the plaintiffs in this case, and that known him in Honolulu, and that of his opinion that he should be discharged from It is admitted by the counsel for the own personal knowledge he knew nothing liability, but he is not entitled to costs, as

The letter of instructions to Chung the distribution must be made according Fong (Afong,) and Young Sheong, dated to the law of his domicile, and it is equally 1st February, 1865, but a few days after well settled that a Court of Chancery has the specific will and immediately on the eve of Achu's departure for China, shows tribution of a testate's or intestate's esclearly that his intention was that all his He acted in part under the will and in estate not bequeathed by will was to go part under the letters of instructions of to his relations in China. After giving Achu, and it is evident that the mother directions about collecting his debts and and wife of Achu, in China, were misled property, he says in that letter: "If I in relation to their rights of property here, (Hee Chiu,) get home to China, I will be happy and thankful to God, and if I perish it was not made known in Court that on my way, then collect my share of the there were any other claimants to the pro- 440 3m) money in the store of Chung Hoon & perty than herself and the alleged adoptand Chung Fong."

Mr. J. W. Austin was their attorney in Sheong. payment of money to the complainants the case, and he testifies as follows: "I was wholly without authority, but was do not remember that they (Young H. Boyd and Kamaka, revoking their well calculated to mislead those parties Sheong and Afong,) ever informed me guardianship of Kalankapu so far as the in their rights.-Williams vs. Gibbs, 17 about any letter being received by them, property is concerned, and directing them

Young Sheong and Afong undoubtedly It is unnecessary to give the answer of received said letter, and partially carried

Achu, to Mon Tuc, of which amount, he There is no record in the Probate Court is informed and believes that only \$2,000 that there was such a letter of instrucwere paid, and that said sum was received tions, or that Achu had a mother and a right belongs in the following proportions by Wei See. He avers further that he wife in China. It is clearly shown, therepaid to said Mon Tue, in China, the sum fore, that Young Sheong took upon himof \$1,000 for the use and benefit of com- self to distribute the estate according to third; and will be so distributed when plainants, and he did not include these the letter of instructions instead of filing paid into Court as ordered. amounts in his accounts because they an inventory of the whole estate, and were paid by virtue of his letter of in- giving all the information he had to the structions from Achu; denies the allegs- Court on the subject of the kindred and der of distribution.

mits further that Kamaka is entitled to try. a just allowance in all the residue of the property of Achu by virtue of the law of this Kingdom which declares that a woman shall be so entitled, when she shall be deceived into contracting an illegal marriage with a man having another wife living, under the belief that he is an unmarried man .- Sect. 1315.

It is contended by the counsel for the defendants that Kalaukapu has the right of inheritance as an adopted child, but this question was settled adversely in the case of "In re Hannah Manghan," at the January Term, 1871, and the articles of adoption in the case of Hannah Maughan and those of Kalaukapu are the same in terms, and include no declaration of heirship, which the Court said was necessary. By the letter of instructions of Achu, it fully appears that he intended that all the residue of his property not included in the will should become the property of his heirs in China, especially his wife and mother and his adopted son, Mon Tuc. It is very evident that Achu did not intend to give to Kamaka and Kalaukapu any more of his property than what was set forth in his will.

clared, that "marriages legal in the country where contracted shall be held legal in the Courts of this Kingdom." It is very evident from the testimony, and from the letter of instructions of Achu himself to Afong and Achuck, that Ching See was in the bill, and leaves the complainants to his lawful wife according to the laws of China and Wei See his mother.

It has been contended that polygamy is recognized in China and therefore there can be no legitimate inheritance by a wife. The witness who was present at the marsaid that they are every where the same, one wife, but often have concubines. That the wife inherits. This is in accordance with the most reliable accounts we have of their domestic relations. They have provided for the undoubted succession of the inheritance by disallowing more than MY MOTTO-What is worth doing at all, is one wife. The position of the wife taken women purchased as concubines, without gradation of the former or the elevation of the latter so as to interchange their places on the taking of a second woman, are all illegal and void, And had Achu said Achu, and that they fraudulently It is unnecessary to give a detail of the been properly instructed, he would have Afong and Yeong Sheong.

Achu refers to Mon Tue as his adopted child, but the evidence is not sufficient to tate, after paying legacies, just debts and proceedings of May 3d, p. 1,) is, that give him a right of inheritance. His counsel declares that he claims nothing for

It appears that Afong never assumed the duties of executor by positive acts, although his name has been used in connection with the estate, but without evidence of authority, and therefore I am of he should have taken interest enough in the business to have signified his de-

I am of opinion that Yeong Sheong made a fraudulent inventory in with holding property which belonged to the estate.

Kamaka was misled as to her rights, as

The counsel for the complainants do not was received by the Executor Yeong

An order is hereby made on Edward to pay the money into Court which they have received in that capacity. And an order is hereby made on Yeong Sheong to pay all the money into Court which belonged to the estate, and of which he

The decree of the Court is, that all the property of Achu which came into the hands of the Executor, Yeong Sheong, to, wit: Kamaka, one-third; Wei See, the moth-er, one-third; and to Ching See, one-

The master will make up the accounts and division according to the foregoing or-

I concur in the view of the Court which that Kalaukapu was his adopted daugh- deceive the mother and wife in China, and affirms the decree of the Chancellor; but ter, and denies that he concealed from Kamaka and the Court as well, and hence in that portion of the decree whereby the the complainants any facts of the case; it is the duty of the Court to re-open the Chinese marriage is held to invalidate the denies that he has paid any claims which case, review the judgment of the Probate subsequent Hawaiian marriage, I assent with great hesitation, from the unsatisfac-It is not denied by the counsel for the tory relations shown to exist between the complainants that the real estate set forth sexes in China, which appear to permit in the will as devised to Kamaka was her concubinage as a lawful accompaniment property in her own right, and it is ad- of their marriages. I hope that the next mitted that she is entitled to the devise Legislature will legislate on the subject of \$500, as therein declared. And he ad- of the marriages of Chinese in this coun-

> C. C. Harris for Appellants, W. C. Jones for Appellees.

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